

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

\_\_\_\_\_  
No. 08-60236  
\_\_\_\_\_

IN RE: SANQARELL ANTONIO JERNINGHAN

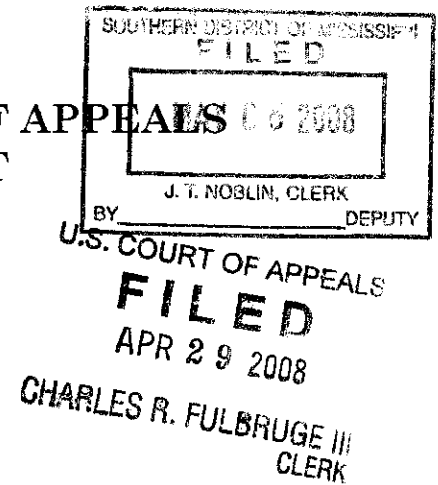
Movant  
\_\_\_\_\_

Motion for an order authorizing  
the United States District Court for the Southern  
District of Mississippi to consider  
a successive 28 U.S.C. § 2254 application  
\_\_\_\_\_

Before KING, WIENER, and ELROD, Circuit Judges.

PER CURIAM:


Sanqarell Antonio Jerningham, Mississippi prisoner # R5937, has filed a motion for authorization to file a successive 28 U.S.C. § 2254 application challenging his 2003 conviction for sale of cocaine and resulting 20-year sentence. In his proposed § 2254 application, Jerningham seeks to allege 1) ineffective assistance of counsel who failed to raise an entrapment defense, which would have shown that Jerningham was lured to sell drugs by the confidential informant (CI); 2) that a juror refused to inform the trial court that she was related to both Jerningham and the CI; 3) ineffective assistance of counsel who refused to call witnesses, failed to investigate the case and learn the identity of the CI, refused to seek a defense to entrapment which would have shown Jerningham's innocence, and failed to challenge the elements of the offense; and 4) that the trial judge was biased as shown by the excessive sentence and by his refusal to instruct the jury on entrapment.



A claim presented in a second or successive habeas corpus application that was not presented in a prior application shall be dismissed unless the applicant shows that the claim relies upon either: (1) "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable;" or (2) facts that "could not have been discovered previously through the exercise of due diligence" and which "would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C. § 2244(b)(2)(A), (B)(i) & (ii).

Jerningham raised in his initial § 2254 application the claims he now seeks to assert that a juror failed to inform the trial court that she was related to Jerningham and the CI and that the trial judge erred in denying an entrapment jury instruction. Those claims must be dismissed. § 2244(b)(1). Jerningham does not explain why he could not have raised his new claims, which are all based on events at trial, in his prior § 2254 application that was filed in July 2006. Although he claims new evidence that other relatives were entrapped by the CI, Jerningham has not shown facts "sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [him] guilty of the underlying offense." See § 2244(b)(2)(B)(ii).

IT IS ORDERED that the motion for authorization to file a successive § 2254 application is DENIED.

A true copy  
Attest: APR 29 2008  
Clerk, U. S. Court of Appeals, Fifth Circuit  
By:   
Deputy  
New Orleans, Louisiana